

HON. ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASTE ACTION PROJECT, a non-profit )  
corporation, )

No. C07-380RSL

Plaintiff, )

CONSENT DECREE

v. )

SARA LEE FRESH, )

Defendant. )



06-CV-00830-CNST

WHEREAS, Plaintiff Waste Action Project filed a Complaint against Defendant Sara Lee Fresh on March 13, 2007, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant's facility located in Kent, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs;

WHEREAS, Defendant denies Plaintiff's claims and any liability for the alleged violations; and

WHEREAS, counsel for the parties to this action have engaged in discussions relating to the potential settlement of this litigation, which discussions have included an assessment of the

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Seattle, Washington 98112  
(206) 860-2883

1 facts surrounding the alleged violations; and

2 WHEREAS, Defendant has undertaken, and is implementing, measures to further ensure  
3 compliance with the Clean Water Act at its facility and to address issues raised in the notices of  
4 intent to sue served by Plaintiff, and Defendant has obtained a Conditional No Exposure  
5 Certificate for its facility; and  
6

7 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best  
8 interest of the parties and the public, and that entry of this Consent Decree without additional  
9 litigation is the most appropriate means of resolving these actions; and  
10

11 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or  
12 final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations,  
13 consent to the entry of this Consent Decree in order to avoid the risks of litigation and to resolve  
14 the controversy between them.

15 NOW THEREFORE, without trial of any issue of fact or law, and without admission by  
16 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,  
17 and upon consideration of the mutual promises herein contained, it is hereby  
18

19 ORDERED, ADJUDGED AND DECREED as follows:

- 20 1. This Court has jurisdiction over the parties and subject matter of this action;  
21  
22 2. The undersigned representative for each party certifies that he is fully authorized  
23 by the party or parties whom he represents to enter into the terms and conditions of this Consent  
24 Decree and to legally bind the party or parties and their successors in interest to it.  
25  
26 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon  
27 the successors and assigns of the parties.  
28  
29 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its

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1 facility located at or about 20230 70<sup>th</sup> Avenue South, Kent, Washington (the "facility").

2 5. This Consent Decree constitutes a full and complete settlement of the claims  
3 alleged in the Complaint in this case and all other claims known and unknown existing as of the  
4 date of entry of this Consent Decree, related to stormwater discharges that could be asserted  
5 under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from operations of the facility  
6 identified in paragraph 4 of this Consent Decree.  
7

8 6. This Consent Decree shall not constitute evidence in any proceeding, an  
9 admission or adjudication with respect to any allegation of the Complaint, any fact or conclusion  
10 of law with respect to any matter alleged in or arising out of the Complaint, or the admissions or  
11 evidence of any wrongdoing or misconduct on the part of the Defendant or its successor.  
12

13 7. In full and complete satisfaction of the claims covered by the Complaint filed in  
14 this case and all other claims covered by this Consent Decree, as described in Paragraph 5,  
15 Defendant agrees to abide by and be subject to the following terms and conditions:  
16

17 a. Defendant agrees to fully comply with the terms of the State of  
18 Washington Industrial Stormwater General Permit, and any successor, modified, or replacement  
19 permit (collectively, the "NPDES permit"), regarding the terms and reauthorization of the  
20 facility's Conditional No Exposure Certificate;  
21

22 b. Defendant shall, for a period of three years beginning on the date that this  
23 Consent Decree is entered by the Court, forward copies to Plaintiff of all written or electronic  
24 communications between Defendant and the Washington Department of Ecology concerning  
25 stormwater management, stormwater discharges, and stormwater permitting relating to  
26 Defendant's facility. These copies shall be forwarded to Plaintiff on a quarterly basis.  
27  
28

1 8. Not later than thirty days after the date of entry of this Decree, Defendant shall  
2 make a payment in the amount of \$10,000 (TEN THOUSAND DOLLARS) to the King County  
3 Department of Natural Resources and Parks project that is described in **Attachment A** to this  
4 Decree. Such payment shall be made by check payable to King County Finance and shall bear  
5 the notation of "Waste Action Project v. Sara Lee Fresh, Inc", and shall be mailed to King  
6 County Water and Land Resources Division, 201 S. Jackson Street, Suite 600, Seattle, WA  
7 98104, Attn: Mark Isaacson, with a copy mailed simultaneously to Plaintiff.

9 9. Not later than thirty days after the entry of this Decree, Defendant shall make a  
10 payment in the amount of \$5,000 (FIVE THOUSAND DOLLARS) to the Veteran's  
11 Conservation Corps Green River Basin Water Quality Monitoring project that is described in  
12 **Attachment B** to this decree. Such payment shall be made by check payable to the Washington  
13 Department of Veteran Affairs and shall bear the notation of "Waste Action Project v. Sara Lee  
14 Fresh, Inc.", and shall be mailed to State of Washington Department of Veterans Affairs, P.O.  
15 Box 41155, Olympia, WA 98504-1155, Attn: Mark Fischer, with a copy mailed simultaneously  
16 to Plaintiff.

17 10. Within 30 days of the entry of this Consent Decree, Defendant shall pay  
18 Plaintiff's reasonable attorney and expert fees and costs in the amount of \$15, 935.79 (FIFTEEN  
19 THOUSAND, NINE HUNDRED AND THIRTY-FIVE DOLLARS AND SEVENTY-NINE  
20 CENTS) by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle,  
21 WA 98112, attn: Richard A. Smith, in full and complete satisfaction of any claims Plaintiff may  
22 have under the Clean Water Act for fees and costs.

23 11. The Court shall retain jurisdiction over this matter and allow this case to be  
24 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any

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1 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any  
2 dispute regarding the terms or conditions of this Consent Decree until termination of the Consent  
3 Decree per paragraph 13. In the event of a dispute regarding implementation of, or compliance  
4 with, this Consent Decree, the parties shall first attempt to informally resolve the dispute through  
5 meetings between the parties by serving written notice of request for resolution to the parties and  
6 their counsel of record. If no resolution is reached within thirty (30) days from the date that the  
7 notice of dispute is served, the parties may resolve the dispute by filing motions with the court.  
8

9 12. The parties recognize that no consent judgment can be entered in a Clean Water  
10 Act suit in which the United States is not a party prior to 45 days following the receipt of a copy  
11 of the proposed consent judgment by the U.S. Attorney General and the Administrator of the  
12 U.S. EPA pursuant to 33 U.S.C. § 1365(c)(3). Therefore, upon the signing of this Consent  
13 Decree by the parties, Plaintiff shall serve copies of it upon the Administration of the U.S. EPA  
14 and the Attorney General.  
15

16 13. This Consent Decree shall take effect on the date it is entered by the Court. This  
17 Consent Decree shall terminate three (3) years and sixty (60) days following its effective date.  
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19 14. This Consent Decree may be modified only upon the written consent of the  
20 parties and the approval of the Court.  
21

22 15. If for any reason the Court should decline to approve this Consent Decree in the  
23 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the  
24 sole discretion of either party. The parties agree to continue negotiations in good faith in an  
25 attempt to cure any objection raised by the Court to entry of this Consent Decree.  
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27 16. Notifications or copies required by this Consent Decree to be made to Plaintiff  
28 shall be mailed to Greg Wingard, Waste Action Project, P.O. Box 4832, Seattle, Washington,  
29

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98194-0832. Notifications required by this Decree to be made to Defendant shall be mailed to

Sara Lee Fresh, 20230 70<sup>th</sup> Avenue South, Kent, Washington, 98032.

Dated and entered this 22<sup>nd</sup> day of July, 2008

*Mr S. Lasnik*

ROBERT S. LASNIK  
UNITED STATES DISTRICT JUDGE

WASTE ACTION PROJECT

Signature: *Greg Wingard*

Title: *Executive Director*

Dated: *May 7, 2008*

SARA LEE FRESH, INC.

Signature: *Ray L. F.*

Title: *V.P. MFG. - West Region*

Dated: *May 1, 2008*

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No. C07-0380RSL

SMITH & LOWNEY, P.L.L.C.  
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